

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of)	
)	
Federal-State Joint Board)	
on Universal Service)	CC Docket No. 96-45
)	
Review of Lifeline and Link-Up)	
Service for All Low-Income)	
Consumers)	
To: The Commission		

Reply Comments of Smith Bagley, Inc.

Smith Bagley, Inc. (“SBI”), by its counsel and pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, 47 C.F.R. §§ 1.415, 1.419, hereby submits its reply comments in response to the *Public Notice* announcing the request by the Federal-State Joint Board on Universal Service (“Joint Board”) for comments on the federal Lifeline and Link-Up programs.¹ SBI is licensed to provide Cellular Radiotelephone Service in Arizona and New Mexico and Personal Communications Service (“PCS”) in New Mexico, Utah and Colorado. SBI has been designated as an Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214(e) of the Communications Act of 1934, as amended, 47 U.S.C. §214(e), in Arizona and New Mexico.²

¹ *Federal-State Joint Board on Universal Service Seeks Comment on Review of Lifeline and Link-Up Service For All Low-Income Consumers, Public Notice*, CC Docket No. 96-45 (rel. Oct. 12, 2001) (“Notice”).

² *In the Matter of Application of Smith Bagley, Inc. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. 214(e)(2) and A.C.C. R14-2-1203*, Docket No. T-02556A-99-0207, Decision No. 63269, *Order* (rel. Dec. 15, 2000); *In the Matter of Application of Smith Bagley, Inc. For Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. 214(e)(2)*, Case No. 3026, *Final Order* (rel. Feb. 19, 2002).

I. BACKGROUND

Since 1999, SBI has worked with the FCC and state commissions to obtain ETC status and to create an innovative program to increase telephone penetration in Native American communities within its service area. In 2001, SBI contracted to purchase PCS spectrum adjacent to its existing cellular network so as to increase its footprint on Native American lands.

Last year, the company launched its VISIONONE™ program, tailored to persons living on tribal lands.³ In addition, it commenced an innovative outreach program to increase telephone penetration levels on reservation lands. Because the distances that customers must travel to reach a storefront are so great, the company decided to go to the customers. In addition to operating storefronts, SBI conducts intensive advertising campaigns in and around Native American communities, inviting prospective customers to attend a day-long event sponsored by SBI. Essentially, SBI moves an entire storefront operation into a town for a day, and hosts a sign-up event where customers can learn about cellular service, determine if they are eligible for Lifeline and Link-Up benefits, sign up for service, have car installations done, obtain training to use a cellular phone, and ask questions of SBI's staff.

Since launching its VISIONONE™ program in May of 2001, SBI has signed up 14,000 new Lifeline subscribers, most of whom have never had a telephone. SBI believes that its outreach effort is yielding significant positive social, economic, health and safety benefits, which will continue to pay dividends on Native American lands for years to come. SBI is very grateful to have the

³ The VISIONONE™ service plan is described on the company's web site at www.cellularoneaz.com/html/visionone.html.

opportunity to implement VISIONONE™, which has been made possible because of the Commission's decision to increase Lifeline and Link-Up benefits available to persons living on tribal lands.

II. DISCUSSION

Because SBI's Lifeline and Link-Up experience is limited to Native American reservation lands, its comments in this proceeding are necessarily focused on ways of improving service to people living on reservation lands. On the whole, the comments filed in this proceeding reflect broad approval of the Lifeline and Link-Up programs and the manner in which the Commission and the Joint Board have pursued the objective of ensuring the availability of telecommunications services to low-income households. SBI shares in this strong expression of support by carriers, state public utilities commissions, citizen advocacy groups, and others. Like many of the commenters, SBI believes that Lifeline and Link-Up programs can be improved. First, the addition of an income-based criterion, set at the federal poverty threshold, would alleviate the complexity of the current eligibility requirements and increase participation in the Lifeline and Link-Up programs. Second, the Link-Up program rules should be clarified to permit carriers serving Native American reservations to recover installation costs associated with innovative programs that are not specifically provided for in the current rules.

A. Household Income Should Be Added to Consumer Eligibility Criteria.

The comments reflect broad support for the addition of a consumer eligibility criterion that would allow individuals to qualify for Lifeline and Link-Up based on household income.⁴ SBI

⁴ See, e.g., Comments of BellSouth at 2; Comments of Gila River Telecommunications, Inc. ("GRTI") at 5; Comments of the Oklahoma Corporation Commission ("OCC") at 3-4; Comments of the United States Conference of Catholic Bishops *et al.*

agrees that adding such a criterion would help boost low Lifeline and Link-Up participation numbers and more accurately target support to those who need it the most.

In formulating its universal service policy in the wake of the Telecommunications Act of 1996, the Commission emphasized that:

... the Act evinces a renewed concern for the needs of low-income citizens. Thus, for the first time, Congress expresses the principle that rates should be “affordable,” and that access should be provided to “low-income consumers” in all regions of the nation.⁵

Under the default federal eligibility rules, Lifeline/Link-Up support is available to low-income consumers only if they participate in one or more of several federal low-income assistance programs.⁶ As the Oklahoma Corporation Commission made clear in its comments, this requirement may unfairly exclude from Lifeline and Link-Up otherwise eligible persons who do not actually participate in such programs.⁷

(“USCCB”) at 3; Comments of the National Association of State Utility Consumer Advocates (“NASUC”) at 12.

⁵ *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8955 (citations omitted).

⁶ 47 C.F.R. §§ 54.409, 54.415.

⁷ *See* Comments of OCC at 3.

This problem is most acute on Native American tribal lands. In SBI's experience, a substantial number of persons living on tribal lands are not enrolled in any government program despite their obvious eligibility. Many applicants have tribal identification cards and nothing more. In the absence of enrollment in one of the specified programs, the most SBI representatives can do is counsel applicants to contact the appropriate state office to enroll.

In view of the fact that basic telecommunications service is vital to health and safety, it is imperative that government policies favor accepting as many eligible persons into the programs as possible. Moreover, with the per capita income level on some reservations hovering well below the poverty level, any potential for fraud and abuse is dwarfed by the administrative costs of detailed programmatic eligibility, cross-checking, and auditing rules.

Accordingly, SBI recommends that the Commission add a freestanding criterion pursuant to which individuals can qualify for Lifeline or Link-Up by demonstrating that their income is at or below the federal poverty threshold, which data is published periodically by the Department of Health and Human Services ("HHS"). As GRTI made clear, an income-based criterion "would eliminate many of the administrative burdens (lengthy applications, frequent re-certification meetings, etc.) placed upon consumers, and thereby increase the probability of their enrollment."⁸ Indeed, it would be relatively simple for a carrier to provide to customers the latest HHS income figures for single persons and families to determine eligibility. The ease of administration would allow for faster growth in penetration rates on tribal lands and in other areas where depressed

⁸ Comments of GRTI at 6-7.

household income levels have traditionally hampered the rollout of essential telecommunications services.

SBI also agrees with those commenters who argue that federal eligibility verification requirements should not be adopted at this time.⁹ Specifically, SBI believes that it would be unduly burdensome, especially on Native American tribal lands, where customers are spread across a wide area, to require carriers to undertake periodic verification of customers' eligibility for Lifeline and Link-Up. As the Commission has previously acknowledged, the need for eligibility audits is questionable as a general matter since the costs of such verification is often much higher than the fraud that would result from the fraud and abuse it would seek to prevent.¹⁰ This is especially true on tribal lands, where, as GRTI pointed out, a large majority of households are below or slightly above the federal poverty threshold.¹¹

Finally, self-certification should be adopted for applicants on tribal lands. Very few of SBI's eligible Lifeline customers earn enough to be required to file a tax return. The self-certification mechanism for high-cost support on tribal lands in Arizona has been more than sufficient to determine eligibility. In Arizona, SBI currently requires customers to declare, under penalty of perjury, that they are enrolled in one of the enabling programs. Any self-certification requirement should include a requirement that customers declare under penalty of perjury that (1) their income

⁹ See Comments of GRTI at 9-10; Comments of the Regulatory Commission of Alaska ("RCA") at 4.

¹⁰ See *Report and Order*, 12 FCC Rcd at 8975.

¹¹ See Comments of GRTI at 10.

level for the most recent year meets the applicable guidelines and (2) if their income increases in coming years they will attempt to qualify under alternative criteria or forego Lifeline benefits.

B. The Link-Up Rules Should be Clarified to Permit Carriers on Native American Tribal Lands to Recover Installation Costs Associated With Their Unique Way of Doing Business.

SBI created its innovative outreach program because it understood that members of the Navajo and Hopi tribes in particular are located in such remote areas that they might never travel to SBI's storefront operation to obtain a telephone, even one which is subsidized. In bringing its service to the people, SBI incurs installation costs that are much different than those it incurs in its stores.

If SBI simply rolled a truck to a residence and performed an installation, the current Link-Up program would provide SBI with substantial reimbursement of up to \$130 for each install. Currently, SBI has only sought recovery of \$20 per install from Link-Up, which represents 50% of its standard connection fee, to program a telephone into its switch and provide any other necessary installation services. SBI has not asked the Commission for additional funds because the Link-Up rules do not contemplate SBI's unique business model and the Link-Up form does not provide a means to describe SBI's costs.

As mentioned above, SBI has learned that the most effective (and efficient) means of introducing telephone service to remotely situated Native American communities is to conduct day-long events at reservation community centers, churches or schools. SBI representatives typically drive multiple trucks to a reservation, set up a complete service center, and introduce SBI's service to tribal residents, many of whom have never had a telephone. SBI conducts training sessions for

people who lack any experience with cellular telephones, performs vehicle installations, and holds informational meetings to explain the eligibility criteria and the company's contract.

These service initiation drives are highly effective and absolutely necessary for tribal residents to gain access to telephone service. Were SBI to simply tell tribal members to travel to its storefront locations, it would have made very little progress in raising penetration rates on tribal lands. It is thus essential that SBI bring the service center to the customer's home community. Additionally, proper training is a critical component of the Link-Up process in tribal communities.

Although the Commission has recognized the need to increase available Link-Up funds where the costs of initiating service in tribal areas are demonstrably higher than in other areas,¹² the Link-Up rules do not provide carriers such as SBI an avenue to recover the costs incurred in this valuable and creative program. Put simply, SBI does not request that Link-Up funding be increased, but that carriers be permitted to report and collect legitimate installation expenses associated with alternative business models.

The rules should be clarified to permit a company serving Native American reservations or otherwise implementing innovative service initiation efforts to submit to USAC an itemization of installation costs for approval. For SBI, the costs of travel, labor, and associated installation services associated with one of its day-long events can be accurately itemized, authenticated, and submitted for approval. The Commission should permit companies to recover these legitimate costs, which do not fit neatly into the conventional methods of connecting customers to the network.

Moreover, the Commission should permit carriers such as SBI the opportunity to submit for reimbursement costs incurred prior to the date the new rules are implemented, since SBI is

¹² See *Twelfth Report and Order*, 15 FCC Rcd 12208, 12238-39.

continuing its outreach efforts despite its inability to properly recover its installation costs under the current program.

III. CONCLUSION

SBI believes that Lifeline and Link-Up are essential to the FCC's mission of increasing subscribership levels on tribal lands and in other underserved communities. With this proceeding, the Commission and the Joint Board have an opportunity to make significant improvements to these valuable programs. An additional consumer eligibility criterion based solely on household income would remedy the problem of low levels of Lifeline and Link-up participation. Enabling carriers to recover the cost of intensive service initiation efforts will encourage carriers to employ creative, efficient methods to introduce service to residents of tribal lands.

Respectfully submitted,

SMITH BAGLEY, INC.

By: /s/ David A. LaFuria
David A. LaFuria
Steven M. Chernoff
Its Attorneys

Lukas, Nace, Gutierrez & Sachs, Chartered
1111 19th Street, N.W.
Suite 1200
Washington, DC 20036
202-857-3500

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